

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

Dan McGrath, Minnesota Majority,  
Complainants,

**PREHEARING ORDER**

v.

Minnesota Secretary of State,  
Respondent.

A prehearing conference was held on February 17, 2011, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota. Erick G. Kaardal, Mohrman & Kaardal, P.A., appeared on behalf of Dan McGrath individually and on behalf of the Minnesota Majority (Complainants). Nathan J. Hartshorn, Assistant Attorney General, appeared on behalf of the Minnesota Secretary of State (Respondent).

This proceeding was brought under Minn. Stat. § 200.04, which governs Help America Vote Act (HAVA)<sup>1</sup> Complaints. The Complaint filed with the Secretary of State on January 3, 2011, stated that it was submitted pursuant to Minn. Stat. § 200.04,<sup>2</sup> that it involved the Secretary of State, and should be referred to the Office of Administrative Hearings within 3 days. The Secretary of State filed his response on January 24, 2011; the Complainants filed their request for hearing on February 4, 2011.

To paraphrase the allegations set forth in the Complaint:

Claim 1 alleges that voter information must be posted to the State Voter Registration System (SVRS) within a specified period, that it had not been posted by 19 counties as of December 15, 2010, in violation of HAVA § 303 (a)(1)(A)(vi), and that no waivers or extensions are permissible. It also asserts that the number of persons who voted in the 2010 General Election differs from the number of names listed on the public voter history file.

Claim 2 alleges that the Secretary of State failed to provide required support to county officials to complete the SVRS updates on an “expedited basis,” in violation of HAVA §303 (a)(1)(A)(vi).

Claim 3 alleges that the names of all voters were not posted to the SVRS within 6 weeks of the 2008 General Election, in violation of Minn. Stat. § 201.171,

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<sup>1</sup> HAVA was enacted in 2002, Pub. L. 107-252, codified at 42 U.S.C. §§ 15481 *et seq.* The parties refer to sections of the Public Law and those references will be used herein.

<sup>2</sup> Minnesota Statutes are cited to the 2010 Edition.

and updated voter registration information was not posted to SVRS within 6 weeks of the 2008 General Election, in violation of Minn. Stat. § 201.121. It also alleges that the updates are still not complete, and that there are 25,000 fewer voter histories from the 2008 General Election than the number of votes certified by the canvassing board for that election. This claim does not specify the section of HAVA that it alleges was violated.

Based on these claims, the Complainants requested a specific remediation plan that includes ordering the Respondent to post the name of every voter participating in an election on an “expedited basis,” or within 6 weeks following an election, and identifies specific features of the plan to accomplish that result.

At the prehearing, there was a brief discussion of the issues set forth in the Complaint and prehearing issues, including discovery, and a schedule was set for prehearing motions and for the hearing.

Also at the prehearing, Respondent served and filed a Notice of Motion and Motion to Dismiss, or in the Alternative for Summary Disposition. The Complainants stated that they would seek certain voter information through discovery. The Respondent objected to the relevance of that information to this proceeding.

The Complainants expressed concern about whether certain unidentified counties should be brought into the proceeding, or whether the Secretary of State should have treated the Complaint as arising under Minn. Stat. § 200.04, subd. 2, when a complaint “pertains to a town, city, school, or county employee or official.” The Complainants were directed to file an appropriate motion if they believe that the Secretary of State improperly referred the matter to the Office of Administrative Hearings (OAH), or if they believe that OAH lacks jurisdiction.

Minn. Stat. § 200.04, subd. 3 (f) states that OAH “must issue a final determination and remedial plan if necessary no later than 90 days after filing of the complaint. If the [OAH] fails to issue the determination within 90 days, it must provide alternative dispute resolution for the disposition of the complaint. That process must be completed within 60 days of its commencement.”

IT IS HEREBY ORDERED:

1. The Complainants shall file a response to the Respondent’s Motion to Dismiss or in the Alternative for Summary Disposition no later than the close of business on **February 28, 2011**. The Respondent may file a reply no later than **March 3, 2011**, or notify the undersigned that it does not intend to do so.

2. Any additional dispositive motions shall be served and filed no later than **February 24, 2011**, and the responding party shall have five working days to respond.

3. This matter is scheduled for hearing on **March 10 and March 14, 2011**, commencing at **9:30 a.m.**, at the Office of Administrative Hearings, 600 North Robert Street, St. Paul, Minnesota.

4. The parties shall exchange proposed written exhibits and witness lists, and file copies with OAH by **March 7, 2011**. See Minn. R. 1400.6950. To the extent possible, the parties shall enter into prehearing stipulations regarding the facts involved in the hearing and foundation for anticipated exhibits. Any party objecting to foundation for any written exhibit shall notify the offering party and judge prior to the hearing or the foundation objection is waived.

5. This proceeding is not governed by Minn. Stat. Ch. 14. See Minn. Stat. § 200.04, subd. 4. The procedural rules set forth in Minn. R. 1400.5100-1400.8400 will be applied to this proceeding to the extent consistent with the governing statute, or unless modified by an order issued in this proceeding. Any party seeking an exception to the rules may file the appropriate motion.

6. In light of the short timeline prior to hearing, the parties are urged to confer and attempt to resolve any disputes between them. If they are unable to do so, they should contact the ALJ immediately to arrange for a telephone conference, and each of them shall file a brief written explanation of the dispute and their efforts to resolve it and provide a copy to the opposing party.

7. Since the Legislature set a short timeline for resolution of complaints under Minn. Stat. § 200.04, and the process is not subject to Chapter 14, it is clear that full discovery is not contemplated for this proceeding, and that the Complainant is expected to bring forward its evidence that the Respondent has violated HAVA.

8. Hearings are ordinarily digitally recorded. In the event that any party requests a court reporter, notice shall be given to the Office of Administrative Hearings no later than **March 7, 2011**. See Minn. R. 1400.7400, subp. 2.

9. Requests for subpoenas for the attendance of witnesses or the production of documents shall be made in writing to the administrative law judge pursuant to Minn. R. 1400.7000. A copy of the subpoena request shall be served on the other parties. A subpoena request form is available at [www.oah.state.mn.us](http://www.oah.state.mn.us).

10. The parties have not requested accommodation for a disability or appointment of an interpreter. The Office of Administrative Hearings shall be notified promptly if either an accommodation or interpreter is needed.

Dated this 18th day of February 2011.

s/Beverly Jones Heydinger  
BEVERLY JONES HEYDINGER  
Administrative Law Judge